

1-1-2011

Fostering Race-Related Dialogue: Lessons from a Small Seminar

Jonathan R. Cohen

University of Florida Levin College of Law, cohenjr@law.ufl.edu

Follow this and additional works at: <http://scholarship.law.ufl.edu/facultypub>



Part of the [Dispute Resolution and Arbitration Commons](#)

Recommended Citation

Jonathan R. Cohen, *Fostering Race-Related Dialogue: Lessons from a Small Seminar*, 22 U. Fla. J.L. & Pub. Pol'y 407 (2012), available at <http://scholarship.law.ufl.edu/facultypub/244>

This Article is brought to you for free and open access by the Faculty Scholarship at UF Law Scholarship Repository. It has been accepted for inclusion in Faculty Publications by an authorized administrator of UF Law Scholarship Repository. For more information, please contact outler@law.ufl.edu.

ESSAYS

FOSTERING RACE-RELATED DIALOGUE: LESSONS FROM A SMALL SEMINAR

Jonathan R. Cohen^{*}
© 2011

| | | |
|------|---|-----|
| I. | INTRODUCTION | 407 |
| II. | FIVE SUGGESTIONS FOR FOSTERING CONSTRUCTIVE RACE-RELATED DIALOGUE..... | 412 |
| | A. <i>Establish Trust and Good Conversational Dynamics Before Discussing Race</i> | 412 |
| | B. <i>Prompt the Discussion with a Reading or Other Informative Stimulus</i> | 413 |
| | C. <i>Listen with the Goal of Understanding the Other Person's Views</i> | 413 |
| | D. <i>Express One's Views Without Being Needlessly Antagonistic</i> | 414 |
| | E. <i>Approach Subjects from Multiple Perspectives</i> | 415 |
| III. | CONCLUSION..... | 415 |

I. INTRODUCTION

For roughly a decade, I have taught a small seminar at the University of Florida Levin College of Law on the subject of reconciliation. For the first six years, the course title was simply, "Reconciliation." At my students' suggestion, four years ago I changed it to, "Social Division and Reconciliation," as slightly under half of the material we cover relates to group-on-group reconciliation. The central theme of the seminar is exploring what brings people together, and, to do this, we analyze a series of topics and case studies. Some of the case studies are

* Professor of Law and Associate Director, Institute for Dispute Resolution, University of Florida Levin College of Law. A.B., J.D., Ph.D., Harvard University. I thank my colleague Katheryn Russell-Brown and my wife Karen Cohen for their helpful comments, and Christine Wang for her fine research assistance. Funding for this Essay was provided in part by the Levin College of Law's summer research fund. All errors are mine alone.

microscopic in nature, the types of disputes which, if not resolved, may produce lawsuits. Other examples are macroscopic in nature, cases where parts of a society are, or have been, in conflict with one another. Within this latter category, the topic we explore in greatest depth is race, specifically Black-White race issues. Books we have read include Randall Robinson's *The Debt: What America Owes to Blacks* (2000), Sharon Rush's *Loving Across the Color Line: A White Adoptive Mother Learns about Race* (2000), Desmond Tutu's *No Future without Forgiveness* (2000), and Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010). The role of race in society certainly reaches many more topics than Black-White race issues.¹ However, our time in the seminar is limited, and, for other reasons too,² that is the topic we examine in greatest depth.

While I have never kept exact statistics, about two thirds of the students in these classes have been White. Of the non-White students, approximately half have been Black. The class typically has about thirteen students, so a representative breakdown might be eight White students, two Black students, and three students from other backgrounds (e.g., Asian, Latino). Most of the students are Americans. Over the course of the semester, I sometimes learn that several are first-generation Americans. Occasionally, there is an international student as well. I myself am a White, upper-class, American, Jewish male. I note particularly the Jewish dimension of that, for though four of the abovementioned characteristics (White, upper-class, American and male) make me a privileged cultural insider, being a Jew in a largely Christian society, whose extended family had numerous members murdered in the Holocaust, gives me somewhat of an outsider's perspective as well.³

I have deep concerns for social justice, and am very much of the belief that achieving social justice is about more than just dialogue. Words can often be empty rhetoric. "The proof," as my former professor Frank Sander often said, "is in the pudding." I should note too that when it comes to matters of social justice, I am both a pessimist and

1. On the need to recognize that race has more than just the Black/White dimension, see Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. 1213 (1997).

2. Principal among those reasons are the unique history of racism toward Blacks in America, the excellent writings available on the subject, and the interesting angle South Africa provides as a comparative study, both in terms of racism where Whites are in the minority and in its attempt at reconciliation, including its Truth and Reconciliation Commission. I should note, however, that approximately half of the seminar is devoted to student presentations of their independent research topics. Not infrequently those presentations have addressed matters of race and social division in other domains.

3. On the ambiguous place of a Jew in predominantly non-Jewish society, see ALBERT MEMMI, *THE COLONIZER AND THE COLONIZED* xiv (1991).

an optimist. The pessimist—or perhaps realist—in me thinks that the “long arc of the moral universe [that] bends toward justice” (to paraphrase Martin Luther King, Jr.) often is *very* long.⁴ As I discuss elsewhere, “structural injustices (*i.e.*, the subordination of one social group to another) . . . can [last] not simply for years and decades, but centuries and millennia.” One of the crucial questions socially subordinate individuals often face is how to cope with injustice that may persist throughout their lives, and indeed throughout their children’s and grandchildren’s lives.⁵

Nevertheless, I am also somewhat of an optimist. I do believe that the arc of the moral universe ultimately bends toward justice. Clearly, the role of race in America today is radically different from what it was two hundred years ago, and significantly different from what it was fifty years ago. A great deal of progress has been made. Further, dialogue has been critical to that progress. People can learn through dialogue. People can heal through dialogue. People can grow through dialogue. Other vehicles—such as art, theatre, narrative—exist for fostering such social development too, but *constructive dialogue*, that is, dialogue through which *learning* takes place, is certainly an essential one.⁶ But how can we achieve such dialogue on race?

In my experience, achieving constructive race-related dialogue is not simple. Many people are uncomfortable talking about matters of race. They do not even want to enter the discussion. In the language of negotiation theorists, many people find talking about race to be a “difficult conversation.”⁷ It is a conversation many people are intimidated to enter, for it may powerfully implicate both a person’s emotions and also his (sometimes unrecognized) sense of identity.⁸ Discussing race can trigger feelings such as anger, superiority, shame and defensiveness, all emotions many would rather avoid. Additionally, comments can easily hit quite “close to home.” Race issues have often directly and significantly touched the lives of the discussants or their loved ones. Once they feel comfortable, sometimes students will share examples of racism (*e.g.*, toward an interracial couple) within their own family. I note too that racism may have a significant subconscious

4. Martin Luther King, Jr., *Where Do We Go From Here?*, Address to the Southern Christian Leadership Conference (Aug. 16, 1967), available at http://en.wikiquote.org/wiki/Martin_Luther_King,_Jr.

5. See Jonathan R. Cohen, *Coping with Lasting Social Injustice*, 13 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 259, 261 (2007).

6. I would contrast constructive dialogue with both destructive dialogue through which injury occurs (*e.g.*, one person tossing a racial epithet at another) and unproductive dialogue in which, though many words may be exchanged, people learn very little from one another.

7. See DOUGLASS STONE ET AL., *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* XV (1999).

8. *Id.*

element.⁹ Hence, conversations about race may bring to the surface powerful feelings and beliefs people do not typically face.

Potential participants in a conversation about race may fear that if they do share their views there will be a backlash. Perhaps a conservative student fears that if she expresses her thoughts she will be labeled a “racist.” Perhaps a progressive student fears that if he shares his thoughts he will be labeled a “radical.” Others may fear that if they express their views it may be held against them at some later time. Recall, for example, how opponents successfully used Professor Lani Guinier’s writings on minority groups’ voting power to block her 1993 nomination to be Assistant Attorney General for Civil Rights, and how opponents attempted (unsuccessfully this time) to use Justice Sonia Sotomayor’s prior statements about ethnicity and gender to block her 2009 nomination to the Supreme Court.¹⁰ By contrast, one might speculate that the political career of President Barack Obama, a leader who clearly cares deeply about race,¹¹ may have been very well served by his *non*-publication record during his time in legal academia.¹² Most people, of course, do not have careers involving political elections or confirmations. Nevertheless, for better *and* worse, remarks people make about race can impact how others will treat them in the future.

Even the act of holding a dialogue may be perceived as a threat. “If there’s something to talk about, then there must be a problem,” a defender of the status quo may reason, “and, in my view, there isn’t any problem.” For over twenty years U.S. Congressman John Conyers has introduced a bill to establish a commission to *study* the question of reparations for slavery. That bill has been repeatedly defeated.¹³ As

9. See Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 322-24 (1987). Related to this is the denial of racism, as denial often goes hand in hand with the perpetuation of social injustice. See Jonathan R. Cohen, *The Culture of Legal Denial*, 84 NEB. L. REV. 247, 305-311 (2005).

10. See L. Darnell Weeden, *Race-Conscious Equality Confronts America, President Obama, Justice Sotomayor, Professor Gates, and Sergeant Crowley*, 35 T. MARSHALL L. REV. 113, 113 (2009).

11. See, e.g., Barack Obama, *A More Perfect Union*, Remarks at the Constitution Center in Philadelphia, PA (Mar. 18, 2008), available at <http://www.npr.org/templates/story/story.php?storyId=88478467> (Obama’s “race speech” delivered during his 2008 presidential campaign).

12. See Ed Lasky, *Barack Obama, Legal Scholar*, AMERICAN THINKER, Aug. 12, 2008, available at http://www.americanthinker.com/2008/08/barack_obama_legal_scholar.html (asserting Obama left “no footprints when it comes to ideas” from his years as a law student and professor). Writes Lasky, “[Barack Obama] left little in the way of a record for Americans to judge his legal abilities. No written records, no signed legal papers, no research papers authored or co-authored by him. Nothing. This is especially surprising because he served as a senior lecturer and law professor (there is some dispute over his title) at the University of Chicago Law School for twelve years.” *Id.*

13. See *Reparations*, Congressional Website of John Conyers, Jr., http://conyers.house.gov/index.cfm?FuseAction=Issues.Home&Issue_id=06007167-19b9-b4b1-125c-df3de5ec97f8

Randall Robinson describes Conyers's efforts in a particular year (1993), "The bill, which did not ask for reparations for descendants of slaves but merely a commission to study the effects of slavery, won from the 435-member U.S. House of Representatives only 28 cosponsors, 18 of whom were black."¹⁴

Who "sits at the table" to take part in the discussion may also be deeply influenced by race. This is certainly true when discussions take place in the U.S. Congress. For example, although the American population is approximately 12.4% Black,¹⁵ none of the current one hundred U.S. Senators are Black, which sadly is hardly a historical anomaly.¹⁶ Indeed, Congress's own website reports that 25 states have never elected an African American to *either* the House or Senate.¹⁷ There is, of course, no law currently in place which on its face would prohibit a Black person from serving as a Senator; however, the fact that no current Senators are Black is indicative of the role race can play in society even in the absence of facially-discriminatory laws. The influence of race on who sits at the table is also part of the history of this very law school. Our law school has a history of legalized segregation, including the quite extraordinary resistance by the Florida Supreme Court in implementing the order of the U.S. Supreme Court to desegregate.¹⁸ Our law school is, of course, no longer segregated. However, if due to nothing more than the underlying population demographics, as with American higher education generally,¹⁹ it is not surprising that in the seminars I have led, the number of White students has always exceeded the number of Black students, a fact which itself significantly influences the discussion.

(last visited June 15, 2011).

14. RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* 201 (2000).

15. See U.S. Census Bureau, *Geographic Comparison Table*, http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=&-ds_name=ACS_2009_1YR_G00_&-_lang=en&-redoLog=true&-mt_name=ACS_2009_1YR_G00_GCT0202_US9&-format=US-9&-CONTEXT=gct (last visited July 5, 2011).

16. In all of U.S. history, only six Senators have been Black. See Wikipedia.com, African Americans in the U.S. Congress, *Political Hotsheet*, CBS NEWS, www.cbsnews.com/8301-50344_16.

17. Those states are: Alaska, Arizona, Arkansas, Colorado, Delaware, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maine, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, and Wyoming. See *Black Americans in Congress: Historical Data*, <http://baic.house.gov/historical-data/representatives-senators-by-state.html> (last visited June 20, 2011).

18. See Darryl Paulson & Paul Hawkes, *Desegregating the University of Florida Law School: Virgil Hawkins v. The Florida Board of Control*, 12 FLA. ST. U. L. REV. 59 (1984).

19. See *Spring 2010: African Americans in Higher Education: Then and Now*, DEFENDERS ONLINE (Nov. 12, 2010), <http://www.thedefendersonline.com/2010/11/12/spring-2010-african-americans-in-higher-education-then-and-now/>.

All of this said, constructive dialogue about race issues is possible. While not every discussion we have had in the seminar over the years has been successful, many have. By “successful” I do not mean that students need to arrive at a particular view of the topic, but that they are engaged in the conversation and learn through the exchange of ideas. (For me, among the most special moments in teaching are when a student who is very hesitant to share his views does, and when a student who has difficulty listening to other students’ opposing views makes that effort).

What then helps to produce such learning conversations? In part the students self-select into the seminar. They can examine the reading list in advance or talk to a student who has previously taken the seminar, so some come to the seminar wanting to talk about race. However, that is not true of all the students. Many, including even some of those aware of the seminar’s contents in advance, have some hesitancy to discuss race-related topics. What then helps foster a good conversation? I do not have a magic solution to that problem, but I can suggest five ideas based upon my teaching experience over the years.²⁰

II. FIVE SUGGESTIONS FOR FOSTERING CONSTRUCTIVE RACE-RELATED DIALOGUE

A. *Establish Trust and Good Conversational Dynamics Before Discussing Race*

I do not begin the seminar with race, but usually turn to it in the third or fourth week. There are several reasons for this. Racial reconciliation is not the only subject we discuss in the seminar. I prefer that the students get comfortable with each other and comfortable with me too, before turning to the potentially-charged topic of race. Building some prior trust before discussing race is not always an option, but where it is, I think it is a good one to exercise.

As with any sensitive topic, prior trust among the discussants helps. Trivial though it may sound, for the first several weeks of the course I devote time at the beginning of the class to making sure that I know each student’s name, and that all the students know one another’s names (“Who thinks they can go around the table and recite everyone’s

20. Other scholars have, of course, addressed different aspects of race-related dialogue. For a collection of readings, see *Symposium Bibliography, Moving to the Next Level: Intentional Conversations about Race, Mediation and Dispute Resolution*, Hamline University School of Law, Dispute Resolution Institute, available at http://law.hamline.edu/files/2001_Bibliography_FINAL_0.pdf.

name?” is a game we sometimes play). When discussing a matter like race, people can sometimes think, “I’ve heard all that before,” and view their counterparts in the discussion as unthinking embodiments of abstract ideologies. I want students to understand that their classmates are real people, each with unique experiences and thoughts. So too I do not always have the class as a whole discuss a subject, but sometimes break it into smaller groups. For example, if I ask students to reflect on how they first learned about race in their own lives, I typically have them break into self-chosen dyads and share their responses with each other that way. Not only does the one-on-one setting give each student the opportunity to actually voice her story (and concomitantly give her partner a clear incentive to listen), but such intimacy also provides an emotionally-safer setting for the student to voice that story than would the entire class. Later, the student can relay her story to the group as a whole if she wishes, but “starting small” can help to get the ball rolling.

B. Prompt the Discussion with a Reading or Other Informative Stimulus

As with other subjects, I almost always assign a reading prior to class. With race-related discussions, I think this is particularly helpful. To intelligently discuss race issues, historical and sociological information is vital, and often people are quite ignorant of such information. Readings and other materials can thus play an important role in priming the discussion.²¹

Readings and other materials can also play a valuable role in fostering the exchange of strong views without the conversation becoming “personal” (in the sense of insulting). Rather than talking directly “at” one another, a reading helps create a more triangular conversation. People may of course have different views of the reading, but that is what they are disagreeing about—the contents of the reading. They are not engaging in personal attacks on one another.

C. Listen with the Goal of Understanding the Other Person’s Views

One of the challenging, but potentially very rewarding, aspects of discussing race is that different people may see the world very differently. For some students, race permeates their conscious understanding of society. For other students, race plays almost no role. For some students, it is crystal clear that affirmative action programs are

21. In this regard, I see myself following the mission statement of our Center for the Study of Race and Race Relations: “With the objective of fostering communities of dialogue, the Center embraces historically and empirically based thinking, talking, teaching, and writing on race.” Center for the Study of Race and Race Relations, Mission Statement, *available at* <http://www.law.ufl.edu/centers/csrrr/mission.shtml> (last visited June 15, 2011).

a form of racism *against Whites*. For other students, it may be equally obvious that the “colorblind” dismantling of affirmative action programs is an expression of racism against Blacks. To me, one of the great challenges as a teacher is to get students to listen carefully and with a curious mindset to those with whom they disagree, and try to learn why the other person understands things the way she does. Listening does not mean one necessarily agrees, but without listening, much learning is essentially impossible.

Law students, perhaps more than most, are quite talented in what one might call “rebuttal listening,” that is, listening with an ear tuned to how one can rebut what another is saying. While rebuttal listening certainly has its place (think of a trial), as a teacher, a different ideal I sometimes keep in mind is what one might call “open-minded listening,” that is, listening with the willingness to have one’s mind potentially changed by what one hears. Of course, one need not change one’s understanding based upon what another says, but unless one has some willingness to do so, what ultimately is the point of listening to them?

Listening can play other roles too in a class. For example, if there is a particularly assertive student with whom others disagree, and who, in return, responds by asserting his position more forcefully, sometimes I will engage in “active listening” with that student, that is, expressing back to that student my understanding of what he is saying. At times, this may help the student clarify what he is saying. If my understanding is wrong, the student can then correct it,²² but, assuming my understanding is correct, it also helps the student to feel heard. Helping an assertive person feel heard can be very useful. Once a person feels heard, rather than continuing to assert his views more and more forcefully (people often become more assertive because they believe that the listener has not understood them), he may then become more open to listening to the views of others.²³

D. *Express One’s Views Without Being Needlessly Antagonistic*

Without people expressing their views, others cannot learn from their thoughts. This is as true regarding race as it is any matter. Hence, as with any topic, when discussing race it is important that people feel comfortable expressing their views. But what if another disagrees with that view? What if another finds it strongly objectionable? What if another believes it to be racist? My hope in class is *not* that students ignore views they disagree with or that they silently self-censor rather

22. In the discourse on negotiation and counseling, this process is called “looping.” See ROBERT H. MNOOKIN ET AL., *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 63 (2000).

23. *Id.* at 49.

than offering a view that might offend another. Rather my hope is that, as they share their thoughts, they have some sensitivity to the impact their words may have on others. Race conversations are difficult enough to begin with. *Needless* antagonism is to be avoided. As with the most of the suggestions above, this is not a lesson I explicitly state to my students, though one certainly could. When teaching, I try my best to model respectful conduct. Almost always I have found that my students act respectfully toward one another as well.

E. Approach Subjects from Multiple Perspectives

Rich conversations, like jewels with many facets, often explore subjects from a variety of perspectives. Usually there are not just two possible perspectives to take on a given topic, but multiple ones. How would a sociologist discuss the matter? How would a historian? What might a child say about it? What might a lawyer? What might a factory worker? When fostering race-related dialogue, I try to avoid having conversations “reduce down” to just to two views or opinions. I try to ensure that many voices are heard, so that different facets of the jewel may be seen. For example, when discussing race in America, I often find the input of international students to be very helpful. As non-Americans, their perspective on American racism is often quite different from that of American students. They too may have racism or analogous social pathologies in their societies; however, they were not raised in America. What American students may see as “just the way the world is,” they may see as simply bizarre. So too, most years when teaching the course I have had students read Desmond Tutu’s *No Future without Forgiveness* (2000). My central purpose is to introduce students to the work of the South African Truth and Reconciliation Commission and associated ideas about restorative justice. An added benefit is that seeing an effort to foster racial reconciliation in another society may shed new light on how we might foster racial reconciliation in our own.

III. CONCLUSION

Race is a sensitive topic for many people, so thinking in advance about how to foster race-related conversations may be particularly beneficial. The greater the divergence of views among participants, the more challenging it may be to hold such a conversation constructively, but all the greater is the ultimate opportunity for learning. My goal in such conversations is not that everyone agrees with one another, but that they share their views with one another, and above all, listen to what one another has to say.

There is no magic solution to ensure that race-related conversations will automatically be constructive ones. But there are steps we can take to increase the chances that will happen. Here, I have presented five ideas that I have found useful in fostering race-related dialogue in a small seminar: (1) establish trust and good conversational dynamics among participants before discussing race, (2) prompt the discussion with a reading or other informative stimulus, (3) listen to others with the goal of understanding their views, (4) express one's views without being needlessly antagonistic, and (5) approach subjects from multiple perspectives. I hope that these ideas may be of use to others as they think about fostering race-related dialogue in the spheres in which they function.